ACQUISITION ADVISORY PANEL
Meeting Minutes
June 29, 2006
General Services Administration Auditorium
1800 F Street, N.W.
Washington, D.C.

The Acquisition Advisory Panel (AAP) convened its twenty-third public meeting on June 29, 2006 in the General Services Administration (GSA) Auditorium, in Washington, D.C. Ms. Marcia Madsen, Chair of the AAP, opened the meeting at approximately 9:20 AM.

The guest speakers and their affiliations were as follows:

Henry Kleinknecht	Program Director for Contract Management, DoD Inspector General's Office	No Attachment
Terry McKinney	DoD Inspector General's Office	No Attachment

The Working Group updates were presented as follows:

Ms. Laura Auletta	Review of Performance-Based Contracts	No Attachment
Mr. Thomas Luedtke	Appropriate Role of Contractors Supporting the Government - Findings	Attachment I

The Panel's Designated Federal Officer (DFO), Laura Auletta, then called the roll. The following Panel members were present:

Mr. Louis M. Addeo
Dr. Allan V. Burman
Mr. Carl DeMaio
Mr. Marshall J. Doke, Jr.
Mr. David Drabkin
Mr. Jonathan Lewis Etherton
Mr. James A. (Ty) Hughes, Jr.
Ms. Deidre A. Lee
Mr. Thomas Luedtke
Ms. Marcia G. Madsen
Mr. Joshua I. Schwartz
Mr. Roger D. Waldron

The following Panel members were not in attendance:

Mr. Frank J. Anderson, Jr.

The Chair welcomed everyone to the meeting and noted that the Panel had several meetings scheduled for the coming month. She listed several of the guest speakers expected at the upcoming meetings and the tentative schedule for the Working Group presentations. She urged the Panel members to provide feedback to the Working Groups on their draft presentations.

Ms. Madsen explained that the day's agenda included findings for consideration from the Appropriate Role of Contractors Supporting the Government Working Group (ARWG), a presentation of the data produced by a review of performance-based contracts in support of the Performance-Based Acquisitions Working Group (PBWG), and a presentation by the Program Director for Contract Management from the Department of Defense (DoD) Inspector General's (IG's) Office.

In an opening comment, Panel member Carl DeMaio referenced a report issued by Congressman Henry Waxman on federal contracting, focusing on no bid contracts. Mr. DeMaio recommended the Report to the Panel, and agreed to provide copies to the members.

Ms. Madsen asked Mr. Thomas Luedtke to present his Working Group's findings.

ARWG– Preliminary Findings:

No Findings were adopted by the Panel at this meeting.

The Findings (*italicized*) and the discussion were as follows:

1. *Several developments have led federal agencies to increase the use of contractors as service providers.*
    a. *Limitations on the number of authorized FTE positions*
    b. *Unavailability of certain capabilities and expertise among federal employees*
    c. *Desire for operational flexibility*
    d. *Need for "surge capacity"*

Mr. Luedtke began by describing that contractors are much more pervasive in the Government and in the Government's function than they were in the past, because (1) there are limitations of the number of civil servants, (2) certain skills are not resident in the Government, not in sufficient quantities, or not in a particular agency, and (3) where efforts are not permanent, the intent is to bring in people to perform a task for a period of time with the understanding that the task is well-defined and temporary.

2. *The existence of the "blended" or "multi-sector" workforce, where contractors are co-located and work side-by-side with federal managers and staff, has blurred the lines between:*
    a. *Functions that were considered governmental and those that were considered commercial*
    b. *Personal and non-personal services*

Mr. Luedtke explained that with the greater use of contractors and the increase in the blended workforce and co-located multi-sector workforce, there has been a blurring between what was traditionally considered work that contractors should perform and what civil servants should perform.

3. *Agencies need to retain core functional capabilities that allow them to:*
    a. *Properly perform their missions*
    b. *Provide adequate oversight of agency functions performed by contractors.*

Mr. Luedtke indicated that agencies need to have enough civil servants in-house to ensure that the agency can perform its mission.

4. *Some agencies have had difficulty in determining strategically which functions need to stay within Government and those that may be performed by contractors.*

5. *The term "inherently governmental" is inconsistently applied across Government agencies.*

Mr. Luedtke explained that, although a particular job description may be different across agencies, two individuals performing under that job description may be performing essentially identical functions. He proposed that the Government should have a standardized definition for such positions.

6. *Contractors are increasingly performing functions previously done by civil servants.*
    a. *The degree of use and functions performed appear to vary widely both within agencies and among agencies.*
    b. *There is no clear and consistent Government-wide information in this area.*

Mr. Luedtke continued to explain that the degree to which this is happening and the specific functions that are being performed vary quite a bit, and that it is not only agency to agency, but also within agencies. The ARWG found that some agencies use contractors sparingly, while others rely on them for the vast majority of the work the agency accomplishes.

Ms. Madsen asked Mr. Luedtke whether the FAIR Act Inventories offer any insight into what different agencies are doing or what they treat as core competencies.

Mr. Luedtke answered that, because the information in the Inventories is broadly stated, it does not contain the level of detail he was contemplating with this finding. He stated that he would not feel comfortable making precise findings or conclusions based on the FAIR Act Inventories alone.

Panel member Ty Hughes suggested that Finding 6 should mention the underlying policies of the FAIR Act and Office of Management and Budget (OMB) Circular A-76; that the statute and the OMB policy focus on traditional commercial activities. He suggested that the grey area described by Finding 6 is the growing "shadow government" of contractors who are stepping into positions that were traditionally held by Government employees, and that the positions now filled by contractor personnel are not necessarily in support of commercial activities.

Mr. DeMaio commented that the issue seems to be that the Government has contractors involved in highly sensitive processes, gaining access to highly sensitive information, and playing a role in

processes and decision-making that some would say only a Government employee should be performing.

Mr. Luedtke responded to both comments by explaining that this Finding makes the observation that there are more functions being done by contractors now than there were in the past, and that the corresponding recommendation will attempt to deal with the answer to the problem.

Allan Burman commented that this issue was explored extensively in the past and was addressed in the context of whether it is appropriate or not appropriate for a contractor to do something that, ordinarily, one would expect a civil servant to do. He explained that the Office of Federal Procurement Policy (OFPP) concluded that there are certain activities which should only be performed by a Government employee, such as awarding contracts, and these types of activities are listed in the OFPP's guidance on inherently governmental activities.

Mr. Luedtke responded that the increase in the multi-sector workforce has made this issue important again, and that the Government should determine if there can be improvements made upon the existing definitions to deal with what has happened both in the Government and in the general economy, and emerge with better guidelines and assistance.

Joshua Schwartz commented that the Government needs to be able to collect data on what functions contractors are performing and to what extent they are performing those functions across the Government in order to engage in effective oversight.

Marshall Doke added that the problem would be better solved by addressing it in terms of conflicts-of-interest because, when the Government contracts with commercial firms that provide both the services and the evaluation of those who provide the services, the Government has got a problem.

Mr. DeMaio mused that this subject area may be outside the Panel's statutory mandate because it is too closely linked to the competitive sourcing process.

Mr. Hughes agreed with Mr. DeMaio and suggested that these findings and recommendations need to be more specifically tailored to the acquisition process and kept out of the competitive sourcing debate. He also commented that the support provided to a decision maker often affects the outcome of that decision, especially in the contract formation process.

Mr. Burman suggested that, rather than a blanket prohibition, perhaps the Working Group should focus on decision-making and conflicts-of-interest. He offered examples of agencies currently using contractors to perform pre-award acquisition support, but said that it would be difficult to determine when such support contracts would be appropriate.

Mr. Doke commented that one solution to the conflict-of-interest issue would be to prohibit contractors from reviewing their own work.

Roger Waldron commented that there are many instances where contractors provide support in the pre-award process that is invaluable, and that agencies could not actually conduct their

procurements in many cases without such support. He continued that it is not realistic to expect that the Government is going hire more civil servants to fill the gap.

At this point, Ms. Madsen interrupted the ARWG presentation to allow the guest speakers from DoD to take the floor.

DoD Inspector General presentation:

Ms. Madsen asked Henry Kleinknecht and his colleague from the IG office to update the Panel on the IG's work. Mr. Kleinknecht explained that he would be discussing performance-based services contracts and the commercial item definition.

He began by describing the recent IG audit finding that contracting officers did not follow sound procurement practices for an indefinite delivery / indefinite quantity (IDIQ) contract valued at about 5 million dollars annually for environmental services. He explained that the IG found that price negotiation memoranda were not prepared for the IDIQ task orders; firm fixed price performance-based task orders were used with traditional statements of work that contained imprecise language and did not adequately define contract deliverables or did not use measurable performance standards in terms of quality, timeliness and quantity.

The IG also found that the contractor actually could not perform at the level at which it was under contract to perform, and it had to subcontract out a significant amount of work at significantly higher labor rates than it had proposed. The IG found the contractor's fully-burdened labor rates on the individual task orders were significantly higher than the labor rates established in the underlying contract.

Mr. Kleinknecht explained that the contractor proposed a fully-burdened labor rate of about $38 an hour for the work, and the contract was valued at between three and four million dollars a year. The Government Technical Review Group that reviewed the contractor's proposal determined that the proposed prices were low, but the Group had difficulty evaluating the proposal because it was a performance-based contract. The IG found that, on the IDIQ work, the contractor's actual rates were approximately $72 an hour, 89 percent higher than the contracted rate, so the Government in this case received about half of what it bargained for in terms of price. The IG asked the contractor why its rates had increased so dramatically, and the contractor responded that it was planning to hire the displaced civil servants. However, the skilled Government workers found other jobs and did not take the jobs the contractor offered, so it had to hire people from other locations.

Mr. Kleinknecht continued to explain that as a result, there was no basis to determine whether fair and reasonable prices were negotiated on individual task orders or to hold the contractor accountable for any performance standards. As a result, the Navy was paying 89.5 percent more than what was negotiated on the basic contract. Also, the contractor could not meet the labor requirements of the contract, so the Government got significantly less labor hours than were established in the contract. The end result is that the program is going to run out of funding. On a five year contract, the Government will spend what was the maximum amount for the IDIQ work under the contract in about two and a half years.

The IG also found in this particular contract that the Government contracting officers were not effectively monitoring and evaluating contractor performance for the function performed. The problem existed because the Government could not effectively monitor and evaluate contractor performance as the contractor had not implemented a quality control program, quality control processes, or management oversight that followed the performance objectives and standards in the contract performance work statement.

Mr. Kleinknecht explained that the IG also found the Government did not properly ensure the contractor's quality control program was implemented in accordance with the contract. As a result, the Government was unable to prepare monthly performance assessments and did not establish a Performance Assessment Board to ensure that payments were made for services that complied with contract requirements. The Government was also unable to ensure that the service provider achieved the outcomes which were tied to measurable standards intended for the performance-based service acquisition (PBSA). Mr. Kleinknecht emphasized that the IG found a lot of problems with the Technical Evaluation Board's methods of evaluating the contractor, mostly related to the Board's inability to properly evaluate a performance-based proposal. The work required under the contract was to be performed in a heavily regulated environmental services area where the processes are very important. The Government needs to know how a contractor is going to perform specific functions when it is handling environmental waste, but the performance-based services methodologies are designed to move away from telling the contractor how to do the work. The IG's conclusion is that this type of work is probably not well-suited to be accomplished using performance-based contracts.

Ms. Madsen asked how long this IG study had been underway. Mr. Kleinknecht responded that the study was the product of an investigation related to a competitive sourcing dispute for this function. As a result of the investigation, the IG found that if the contractor had initially proposed its actual labor rates, the contractor would have lost the competition. Instead, the Government's Most Efficient Organization would have won and the function would not have been contracted out.

Mr. Hughes asked whether the IG findings parallel what the Panel learned from industry about the importance of defining requirements in a performance-based contract, and also about having a good plan to measure performance once the work is awarded, and whether the IG was able to draw any conclusions? Given that the IG has identified a problem, Mr. Hughes asked whether they think the problem is widespread or not.

Mr. Kleinknecht responded that the real issue here is the type of work contracted for and the appropriate application of performance-based methods. The IG surmised that performance-based is not the best method for inherently undefined work like environmental remediation, and if this type of work is accomplished using performance-based methods, the Government needs to do a much better job of defining its requirements in solicitations and statements of work. He continued to explain that the IG is recommending that activities utilize multiple award contracts where they can get competition through the fair opportunity process for task orders. He emphasized that, in general, it is difficult to do a performance-based contract or task order when the Government does not know exactly what its requirements are.

Mr. Kleinknecht explained that, because the orders under the audited contract were fixed price task orders which did not require a final product, but instead required something analogous to a level of effort, that when the task order funding was exhausted and there was more work that needed to be done, the task order had to be modified to add more funding so that the task could be completed. So, if the contractor under-runs its estimated costs, the Government will have no visibility into what amount of funding was actually expended to complete the task. But, if the contractor over-runs its estimated costs, the Government will always add additional money to the task order to finish the project.

Mr. Schwartz asked whether, given the issue of inadequate contract administration, there are adequate resources to manage the contract.

Mr. Kleinknecht responded that, in this case, there was significant turnover in the contracting office. While that may have been a contributing factor, he did not know exactly why the Government had the problems it did. He stated that the turnover might be the main reason, but added that there is a significant amount of work to managing all the task orders properly and that it is difficult to do a performance-based service contract for this type of work unless the Government has a great deal of expertise in the subject matter.

Mr. Kleinknecht then began to discuss commercial items. He explained that a forthcoming IG report identifies a situation where the contract negotiating team used a questionable commercial item determination which exempted the contractor from the requirements of cost or pricing data on a sole-source $860 million contract for spare parts used on defense weapon systems. He explained that this occurred because the guidance on commercial item determinations and the commercial item exception to cost or pricing data in the United States Code, Federal Acquisition Regulation (FAR), and other DoD guidance is unclear, and DoD has not revised or clarified the procedures and methods to be used for determining the reasonableness of pricing of exempt commercial items in the FAR as required by the Strom Thurman National Defense Authorization Act for FY 1999 (Strom Thurman Act). As a result, the negotiating team classified all contractor non-competitive spare parts as exempt commercial items, and relied primarily on price analysis of previous Government prices which had been determined not to be fair and reasonable by previous Defense Logistics Agency audits. The IG found this method places the Government at high risk of paying excessive prices and profits on goods, and makes an activity's accomplishment of its fiduciary responsibility for DoD funds questionable.

Another problem he pointed to was that nearly everything the Government buys qualifies as a commercial item, and that it is difficult in general to price these items. Mr. Waldron asked whether this was a function of the regulatory framework or of the decisions people are making.

Mr. Kleinknecht responded that it is the regulatory framework. He contended it is problematic that basically any item DoD buys can fit within the commercial item definition. He explained that the IG is recommending that DoD clarify exceptions to cost or pricing data for non-competitive commercial items, address statutory requirements, and provide instructions that contracting officers require submission of data other than certified cost or pricing data from the contractor. He suggested that, at a minimum, this data should include appropriate information on prices for which the same or similar items have previously been sold in the commercial

marketplace and that it should be adequate for evaluating the reasonableness of the price of the procurement.

The IG suggested that the FAR, at 52.215-20, instruct appropriate Government officials to make a determination whether any "of a type" item is sufficiently similar to the military item and whether any difference in price can be identified and justified. The IG suggests that any significant difference in similarity or price should be supported by cost analysis, and the regulations should instruct the contracting officer to make a determination as to whether commercial sales information provided by the contractor is adequate to the support a price reasonableness determination.

At the request of Mr. Hughes, Mr. Kleinknecht reiterated the IG's recommendations that (1) use of a prior DoD contract as the "commercial market" basis for a determination of fair and reasonable pricing is inadequate, (2) to comply with the Strom Thurman Act, contracting officers should be instructed to perform price analysis on commercial sales when sales of the same or similar items previously sold in the commercial market are adequate for evaluation through price analysis, and to ensure the integrity of the commercial sales information, (3) the contracting officers should be instructed to get cost information and perform cost analysis if the commercial sales are not adequate to determine price reasonableness, and (4) it be made clear in regulations or policy that price analysis using previous Government prices is only acceptable if recent cost analysis or competition was used to support the price.

Mr. Hughes asked about cost analysis in the context of Defense Contract Audit Agency practices and contractor financial systems that are compliant with Government Cost Accounting Standards (CAS). He asked how the Government performs the cost analysis when it is dealing with a contractor that does not necessarily have a CAS-covered system.

Mr. Kleinknecht acknowledged that cost analysis is more difficult if a contractor does not have a CAS-compliant system. However, he maintained that those circumstances only occur with approximately five percent of the contractors in question. He explained that the IG is providing support to Defense Logistics Agency contractors that are not CAS-compliant, and the IG is getting non-CAS cost information.

Mr. Hughes then asked for examples of what kind of information Mr. Kleinknecht considers useful in non-CAS-covered systems. Mr. Kleinknecht responded that the IG calculates a burden of what the cost would be for the item, based on the contractor's actual costs and rates. Mr. Kleinknecht indicated that this report would be public in late July.

Mr. Waldron asked if this report was focused on spare parts for military hardware and not services. Mr. Kleinknecht responded affirmatively. But he emphasized that the IG takes issue with procuring these items using FAR Part 12 "commercial" practices when the Government paid for the development of the items and they are only used in weapons systems. He cited an example of generators used to start F-16 engines - the item was developed specifically for the F-16 using Government research and development funding. Recently, the item was purchased as a "commercial" item, using the rationale that generators "of a type" similar to the required item are sold in substantial quantities to the general public. He explained that the IG does not approve of

such broad interpretations of the "of a type" and "substantial quantities" commercial determinations being used as justification to price contracts under FAR Part 12, especially where the particular item is never sold anywhere other than to the Government.

After thanking Mr. Kleinknecht, Ms. Madsen welcomed Mr. Terry McKinney, also from the DoD IG's office, and turned the meeting over to him.

Mr. McKinney explained that, during the last year, his office had several teams working on reviewing interagency contracts, specifically at GSA, Interior, NASA, and Treasury. He described that DoD spent about five and a half billion dollars on interagency contracts in FY 2005 with these four agencies, and he explained that this translates into about 52,000 requests for contracting actions. The IG looked at about 22 different activities throughout these entities, reviewing approximately 210 contracts which accounted for approximately $300 million in contracts. He provided that the final reports will be issued by mid-August.

Mr. McKinney described how the IG split the results into two areas, an acquisition area and a funding area. His office looked at types of contracts, whether there was competition, market research, fair and reasonable pricing, and contract surveillance. He explained that the IG's office studied everything it could in the acquisition area, and on the funding aspects, scrutinized how the money was transferred to the entities by DoD, how the money was accounted for, how the money was used, and how the residual money was returned.

Further, Mr. McKinney said that the IG found several recurring issues, including lack of market research and competitive procedures, inadequate planning for the use of interagency contracting assistance, inadequate documentation of price reasonableness, unclear delineation of contract administration responsibilities between the activities, and improper execution of interagency agreements and reimbursable funding documents. The investigation further found approximately 38 Anti-Deficiency Act violations and various instances where fiscal controls were improperly circumvented in attempts to "park" funds at a non-DoD agency.

Mr. Waldron sought confirmation that the non-DoD agencies involved in the reports would have an opportunity to respond to the findings before the reports are made public. Mr. McKinney responded that each individual agency IG would receive a copy of the report and that the various agencies could respond to the DoD IG through their respective IG offices.

Finally, Mr. McKinney agreed to Ms. Madsen's request that he keep the Panel informed as to the release date of the final reports.

After a short recess, the Panel reconvened with the continued discussion of the ARWG presentation.

<u>The ARWG presentation (continued from above):</u>

The Findings (*italicized*) and the discussion were as follows:

7. *There is a need to assure that the increase in contractor involvement in agency activities does not undermine the integrity of the Government's decision-making processes.*

8. *The increase in the use of contractors to perform functions that in the past were performed by federal employees, coupled with increased consolidation in many sectors of the contractor community, has increased the potential for organizational conflicts-of-interest.*

Mr. Luedtke commented that the circumstances described in Findings 7 and 8 increase the Government's risk.

9. *There are numerous statutory and regulatory provisions governing the activities of federal employees that are designed to protect the integrity of the Government's decision-making processes.*
    a. *Almost all of these provisions apply only to federal employees.*

Mr. Luedtke commented that while the laws have not always been 100 percent effective in deterring unethical behavior, at least when there is a violation, there are specific consequences and statutes that can be invoked.

Several Panel members commented and agreed that the existing laws are adequate to cover Government employee behavior.

10. *A blanket application of the Government's ethics provisions to contractor personnel raises issues in:*
    a. *Cost*
    b. *Enforcement*
    c. *Management direction*

Mr. Luedtke offered anecdotal evidence that through contractual provisions or otherwise, and on a case by case basis, some agencies have imposed similar restrictions on contractor personnel that were involved in processes where a Government employee would be subject to the ethics laws and rules. He further commented that the Working Group found no consistent Government-wide approach to the issue.

Ms. Madsen then requested that Ms. Laura Auletta discuss the results of a data analysis regarding performance-based acquisition (PBA) done in response to a request from the PBA Working Group.

Ms. Auletta explained that the PBA Working Group asked the Panel staff to review randomly selected performance-based contracts and orders from the top 10 contracting agencies and to make an assessment of how well the agencies had implemented PBA requirements. Ms. Auletta thanked staff members Rosanne Tarapacki and Emile Monette for their efforts on this review. Using a 2004 Federal Procurement Data System-Next Generation (FPDS-NG) report on all the orders and contracts that agencies coded as performance-based, the Panel staff selected a total of 80 orders and contracts randomly using the broad guidelines that 1) the actions reported be in

excess of 20 million dollars where possible, and 2) that they be generally within the areas of professional and management services, and IT services. The staff evaluated the contract requirements and how they were stated. Each contract was reviewed for performance standards, surveillance plans, and inclusion of any incentives or reductions. Ms. Auletta explained that the review is not complete but as of this date, the staff received 56 of the 80 requested files, eight of these did not contain sufficient documentation to complete the evaluation and the staff has followed up with these agencies. Therefore, she said, the analysis to date reflects a review of 60 percent of the sample of 80 or 48 transactions.

Ms. Auletta said that, similar to the 2002 GAO study, the Panel-initiated review found a range in the degree to which the contracts exhibited performance based characteristics. She reported that 38 percent of the contracts reviewed to date were determined to be performance based service acquisitions. Another 23 percent required significant improvement in one or more of the elements characteristic of a PBA, and then finally, of the orders and contracts coded as performance based in FPDS-NG, 40 percent were clearly not performance based. In response to questions from Carl DeMaio, Ms. Auletta said that a "fairly significant number" were determined not to be performance-based by the agencies themselves, some of whom said these actions were mistakenly coded as performance-based in FPDS-NG. Mr. DeMaio then read into the record a couple of the actual responses from agencies that had themselves determined the requested contracts not to be performance-based.

Ms. Auletta then went on to say that Ms. Tarapacki's evaluation write-up indicated that in the case of the 23 percent that required significant improvement, the transactions were generally more performance-based than not and demonstrated an honest attempt. The weaknesses were generally in performance standards and metrics. Ms. Auletta said that "although the requirements were often stated as outcomes appropriately, though some more prescriptive than others, the measures were not adequately linked to the specific outcome and/or the quality attribute being measured was inadequate or insufficient, such as timeliness, which is fine but we would expect that in any contract and probably not sufficient as a stand alone." She described other repeating shortfalls such as instances where incentives were used but were not tied to the stated outcomes, as well as the Government's lack of a Quality Assurance Surveillance Plan (QASP) to correlate to the contractor's quality control plan. Dr. Allan Burman stated that the lack of Government surveillance seems to be a recurring problem in various analyses with which he was familiar. Mr. DeMaio added that this study reinforces the issues that the PBA Working Group identified in their findings. He noted that the Working Group initiated this study based on a request received in a public comment to do so.

The Panel Chair adjourned the twenty-third public AAP meeting at 1:00 PM.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

SEP 22 2006

Ms. Marcia G. Madsen
Chair
Acquisition Advisory Panel

APPROPRIATE ROLE OF THE CONTRACTOR SUPPORTING THE GOVERNMENT

FINDINGS

Tom Luedtke
Working Group Chair

Acquisition Advisory Panel

June 29, 2006

These slides contain preliminary Working Group findings for discussion purposes only. They have not been approved by the Acquisition Advisory Panel.

Finding 1

- Several developments have led Federal agencies to increase the use of contractors as service providers.
  - Limitations on the number of authorized FTE positions
  - Unavailability of certain capabilities and expertise among Federal employees
  - Desire for operational flexibility
  - Need for “surge capacity”

Finding 2

- The existence of the “blended” or “multi-sector” workforce, where contractors are co-located and work side-by-side with federal managers and staff, has blurred the lines between:
  - Functions that were considered governmental and those that were considered commercial
  - Personal and non-personal services

Finding 3

- Agencies need to retain core functional capabilities that allow them to:
  - Properly perform their missions
  - Provide adequate oversight of agency functions performed by contractors.

Finding 4

- Some agencies have had difficulty in determining strategically which functions need to stay within government and those that may be performed by contractors.

Finding 5

- The term “Inherently Governmental” is inconsistently applied across government agencies.

Finding 6

- Contractors are increasingly performing functions previously done by civil servants.
- The degree of use and functions performed appear to vary widely both within agencies and among agencies.
- There is no clear and consistent government-wide information in this area.

Finding 7

- There is a need to assure that the increase in contractor involvement in agency activities does not undermine the integrity of the Government's decision making processes.

Finding 8

- The increase in the use of contractors to perform functions that in the past were performed by Federal employees, coupled with increased consolidation in many sectors of the contractor community, has increased the potential for organizational conflicts of interest.

Finding 9

- There are numerous statutory and regulatory provisions governing the activities of Federal employees that are designed to protect the integrity of the government's decision-making process.
- Almost all of these provisions apply only to Federal employees.

Finding 10

- A blanket application of the government's ethics provisions to contractor personnel raises issues in:
  - Cost
  - Enforcement
  - Management direction

Finding 11

- The current restrictions on personal services contracts create difficulties in managing the blended workforce.